

REMARKS

Reconsideration of the present application is respectfully requested in view of the following remarks. Prior to entry of this response, Claims 16-21, 23-24, and 26-27 were pending in the application, of which Claims 16, 23, and 26 are independent. In the Final Office Action dated April 15, 2009, Claims 16-21, 23-24, and 26-27 were rejected under 35 U.S.C. § 101 were rejected under 35 U.S.C. § 103(a). Applicants hereby address the Examiner's rejections in turn.

I. Change to Attorney Docket Number

Please note that the Attorney Docket Number for this application is now A-8753/60374.0068USI2.

II. Rejection of Claims Under 35 U.S.C. § 103(a)

In the Final Office Action dated April 15, 2009, the Examiner rejected Claims 16-21, 23-24, and 26-27 under 35 U.S.C. § 103(a) as being unpatentable over WO Pub. No. 01/56297 ("*Naden*") in view of U.S. Pat. Pub. No. 2004/0177381 ("*Kliger*").

Claims 16, 23, and 26 have been amended, and Applicants respectfully submit that the amendments overcome this rejection and add no new matter. Claim 16 is patentably distinguishable over the cited art for at least the reason that it recites, for example "a processor configured to receive notifications identifying unused frequencies; and a modulator configured to modulate the stored multimedia signals prior to supplying the stored multimedia signals to the switch to an identified unused frequency".

Independent claims 23 and 26 include a similar limitation. Support for these amendments can be found in the specification at least in paragraphs [0021-0022].

Applicants first note that the Final Office Action failed to address each and every limitation. Specifically, for Claim 16, the Office Action states:

Naden further teaches **modulating stored multimedia signals prior to distribution over the network** (pg. 9 lines 7-17 and pg. 11 lines 22-25). However, Naden does not explicitly teach the first receiving device supplying modulated stored multimedia signals to the second receiving device via the switch. (Final Office Action, p. 4) (emphasis added)

Claim 16 requires “a modulator configured to modulate the stored multimedia signals **prior to supplying the stored multimedia signals to the switch** to an identified unused frequency”. Thus, Claim 16 requires that the stored multimedia signals are modulated prior to transmission to the switch. The Final Office Action recognizes that *Naden* fails to teach the first receiving device supplying modulated stored multimedia signals to the second receiving device via the switch.

Naden further fails to disclose a processor configured to receive notifications identifying unused frequencies. *Naden* nowhere discloses a notification process such that a processor can identify the appropriate unused frequency to modulate the signal prior to being transmitted to the switch.

Kliger fails to remedy the deficiencies of *Naden*. *Kliger* is cited in the Final Office Action as teaching “the first receiving device supplying modulated stored multimedia signals to the second receiving device via a network entry point. (Fig. 2: Home media server 24 provides modulated recorded multimedia to thin clients 28 via splitter 14, [0020]-[0023].)” (Final Office Action, p. 4). Again, this fails to address the actual limitation of Claim 16 requiring “a modulator configured to modulate the stored

multimedia signals **prior to supplying the stored multimedia signals to the switch** to an identified unused frequency”.

Kliger appears to disclose an active reflector 36 which may modulate the legacy set-top box signal into a band “not normally used in the house”. (*Kliger*, para [0022]). Thus, in *Kliger*, the signal is modulated at the switch as opposed to prior to arriving at the switch. *Kliger* teaches directly away from this limitation in Claim 16. Furthermore, *Kliger* fails to teach a processor to receive notifications identifying unused frequencies to be used by the modulator. *Kliger* simply guesses whether a band is available based on the frequency of use of a particular range of bands. (*Kliger*, para [0022]).

For at least the reason that *Naden* and/or *Kliger* fail to disclose, teach or suggest “a processor configured to receive notifications identifying unused frequencies; and a modulator configured to modulate the stored multimedia signals prior to supplying the stored multimedia signals to the switch to an identified unused frequency”, Applicant respectfully submits that *Naden* and/or *Kliger* do not anticipate Claim 16. Claims 23 and 26 contain similar limitations. Therefore, Applicant requests that the rejection of Claims 16, 23, and 26 be withdrawn.

Dependent Claims 17-21, 24, and 27 are also allowable at least for the reasons described above regarding independent Claims 16, 23, and 26 by virtue of their respective dependencies upon independent Claims 16, 23, and 26. Accordingly, Applicants respectfully request withdrawal of this rejection of dependent Claims 17-21, 24, and 27.

III. Conclusion

Applicants respectfully request that this Amendment After Final be entered by the Examiner, placing the claims in condition for allowance. Applicants respectfully submit that the proposed amendments of the claims do not raise new issues or necessitate the undertaking of any additional search of the art by the Examiner, since all of the elements and their relationships claimed were either earlier claimed or inherent in the claims as examined. Therefore, this Amendment should allow for immediate action by the Examiner.

Finally, Applicants respectfully submit that the entry of the Amendment would place the application in better form for appeal, should the Examiner dispute the patentability of the pending claims.

In view of the foregoing remarks, Applicants respectfully submit that the claimed invention, as amended, is neither anticipated nor rendered obvious in view of the prior art references cited against this application. Applicants therefore request the entry of this Amendment, the Examiner's reconsideration and reexamination of the application, and the timely allowance of the pending claims.

The preceding arguments are based only on the arguments in the Official Action, and therefore do not address patentable aspects of the invention that were not addressed by the Examiner in the Official Action. The claims may include other elements that are not shown, taught, or suggested by the cited art. Accordingly, the preceding argument in favor of patentability is advanced without prejudice to other bases of patentability.

Please grant any extensions of time required to enter this amendment and charge any additional required fees to our Deposit Account No.13-2725.

Respectfully submitted,
MERCHANT & GOULD P.C.

P.O. Box 2903
Minneapolis, MN 55402-0903
404.954.5066

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/D. Kent Stier/
D. Kent Stier
Reg. No. 50,640

MIK/ak